

MARC J. HELD*

PHILIP M. HINES*

*ALSO ADMITTED IN NEW JERSEY

HELD & HINES LLP
ATTORNEYS AT LAW

JACK ANGELOU

MATTHEW R. GROSSO

EDWARD S. MILLER

URI NAZRYAN

OF COUNSEL

SHERRY D. DANZIG

Via Electronic Filing

Hon. Rachel P. Kovner, United States District Court Judge
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
New York, NY 11201

June 28, 2022

Re: *GBML LLC v. M2B Investors, Ltd. et al.*
Case No.: 1:22-cv-03138

Dear Judge Kovner:

This firm represents the Plaintiff in this matter, GBML LLC. We are writing in response to the letter of June 24, 2022 of Joshua Levin-Epstein, Esq., of the firm of Levin-Epstein & Associates, P.C., attorneys for Defendants, requesting a pre-motion conference regarding their anticipated motion to dismiss pursuant to FRCP 12(b)(1) and (6), and for a stay of discovery pursuant to FRCP 26(c).

The gravamen of Defendants' application appears to be that the Real Estate Settlement Procedure Act (RESPA) and the Truth in Lending Act (TILA) are not applicable to the subject real estate transaction, claiming as they do that it was for business or commercial purposes, and that since neither RESPA nor TILA apply, this Court lacks subject matter jurisdiction.

This position appears to be spurious and contrary to all the documents in this case, including the loan document disclosures, which specifically refer to this real estate transaction as a purchase/sale of residential property subject to RESPA and federal law. For example, the Contract of Sale, is clearly titled "Residential Contract of Sale". The Rider at p. 7 is entitled "Notes on Mortgage Contingency Clause for Residential Contract of Sale".

Furthermore, the Servicing Disclosure Statement, which is a loan document drafted by the moving defendant (annexed hereto as Exhibit A) states, "You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law."

Also, the Acknowledgment of Receipt of RESPA's Homeownership Counseling Organizations List Loan Disclosure, a document also drafted by the defendant, is annexed hereto as Exhibit B, and states, in part, "The RESPA Homeownership Counseling Organizations list was provided by Wall Street Mortgage Bankers, LTD D/b/a Power Express as required by RESPA's Regulation X, 12 CFR Sec. 1024.20."

Moreover, the loan commitment letter (annexed hereto as Exhibit C) states at ¶ 10 that "At

closing, an escrow impound account will be established and an initial escrow deposit will be required in accordance with RESPA” and indicates that the loan is subject to a Closing Disclosure (“CD”) be provided to the Plaintiff borrower which is a requirement only for RESPA regulated loans.

In addition, Defendant Wall Street Mortgage Bankers Ltd.’s website (www.powerexpressmortgage.com) indicates that they only handle residential loans.

The defendants’ allegation that the subject loan is not a Federally Related Mortgage Loan is without merit and is belied by 12 U.S.C. §2602(1), which states, in pertinent part:

(1)the term “federally related mortgage loan” includes any loan (other than temporary financing such as a construction loan) which—

(A)

is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property;

As to the claim that Plaintiff is not a person, 12 U.S.C. §2602(5) states, “the term “person” includes individuals, corporations, associations, partnerships, and trusts” Further, the loan documents were executed by Philip Hines, individually and GBML, LLC is a single purpose entity created for the sole purpose of purchasing the property and constitutes a “person” under the statute.

Defendants reference to 12 U.S.C. §2601(a)(1) is puzzling, in that no such section exists.

Based upon the above, it is impossible to discern any proper basis for the proposed motion, which borders upon the frivolous. The above referenced documents were all available to Defendants, drafted and created by the defendants and readily available via the defendants’ own document portal, yet their position is contrary to the face of these documents by claiming that RESPA does not apply.

Unfortunately, this is not the first instance of Defendants’ questionable conduct before this Court. The second request for an extension of time to answer, submitted on behalf of Defendant M2B Investors (Dkt. No. 12), states that the request was made with consent of Plaintiffs. However, plaintiffs’ consent was conditioned upon the request for an extension being only to July 11, 2022, as per the request for an extension on behalf of Defendant Wall Street Mortgage Bankers (Dkt. No. 9), *not* to July 20, 2022, as requested in Dkt. No. 12. Defendants did not so properly advise the Court.

Based upon the above, it is respectfully requested that the Court deny Defendants’ request to file a motion to dismiss. Further, we would like to file a motion for summary judgment for specific performance as there was a valid signed contract of sale which the Defendants violated.

We will address Defendants' request to move to quash a subpoena of Defendants' retained appraiser in a separate response, as it was filed earlier today.

We thank the Court for its attention to this matter and await the Court's guidance.

Respectfully submitted,

/s/ Marc J. Held
Marc J. Held, Esq.

EXHIBIT A

LOAN #: NY01210581

SERVICING DISCLOSURE STATEMENT

Lender/Broker: **Wall Street Mortgage Bankers, LTD D/b/a Power Express**

Date: **March 7, 2022**

License #: 1324

NMLS #: 1324

NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED.

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

☒ We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.

Or

☒ We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.

Or

☐ The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.

ACKNOWLEDGEMENT OF MORTGAGE LOAN APPLICANT(S)

I/We have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below.
I/We understand that this acknowledgement is a required part of the mortgage loan application.

DocuSigned by:
PHILIP HINES
PHILIP HINES

3/7/2022 | 12:32:23 PST

DATE

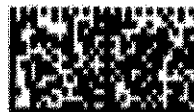


EXHIBIT B

NATIONAL BUREAU OF INVESTIGATION

ACKNOWLEDGEMENT OF RECEIPT OF RESPA'S HOMEOWNERSHIP COUNSELING ORGANIZATIONS LIST

Borrower(s): **PHILIP HINES**

Date: **March 7, 2022**

Loan Number: **NY01210581**

Property Address: **4813 & 4815 Avenue N
Brooklyn, NY 11234**

Lender/Broker: **Wall Street Mortgage Bankers, LTD D/b/a
Power Express**

Loan Originator: **Fiona Elizabeth Khan**

License #: **1324**
NMLS #: **1324**

License #: **8484**
NMLS #: **8484**

The undersigned hereby acknowledge(s) receiving a list of the ten closest HUD-approved Homeownership Counseling Organizations to the primary borrower's current address. The RESPA Homeownership Counseling Organizations list was provided by **Wall Street Mortgage Bankers, LTD D/b/a Power Express**

as required by RESPA's Regulation X, 12 C.F.R. § 1024.20.

Wall Street Mortgage Bankers, LTD D/b/a Power Express

retrieved the list of Homeownership Counseling Organizations from:

- ☒ the CFPB's website at www.consumerfinance.gov/find-a-housing-counselor
☐ HUD's website at www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm

By signing below, you hereby acknowledge reading and understanding all of the information disclosed above, and receiving a copy of the Homeownership Counseling Organizations List on the date indicated below.

DocuSigned by:
PHILIP HINES
PHILIP HINES

3/7/2022 | 12:32:23 PST

DATE



EXHIBIT C



Bank info

Barbara Briller <bbriller@powerexpressmortgage.com>
To: Marc Held <mheld@heldhines.com>

Tue, Apr 5, 2022 at 11:46 AM

Commitment letter

Barbara Briller

Wall Street Mortgage Bankers Ltd DbA Power Express

1010 Northern Blvd. • Suite 426 • Great Neck • NY • 11021

Phone: (516) 355-4522 | Fax: (516) 355-4622

Email: bbriller@powerexpressmortgage.com

*** Confidentiality Note: This message and any attachments may contain legally privileged and/or confidential information. Any unauthorized disclosure, use or dissemination of this e-mail message or its contents, either in whole or in part, is prohibited. If you are not the intended recipient of this e-mail message, kindly notify the sender and then destroy it.

From: Marc Held <mheld@heldhines.com>
Sent: Tuesday, April 05, 2022 11:08 AM
To: Barbara Briller <bbriller@powerexpressmortgage.com>
Subject: Re: Bank info

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

[Quoted text hidden]

 **commitment letter.pdf**
299K

MORTGAGE COMMITMENT

Company Name: Wall Street Mortgage Bankers, LTD D/b/a Power Express
Loan Number: NY01210581

Company Address: 1010 Northern Blvd., Suite 336 | Great Neck, NY 11021
Telephone Number: 516-355-4500
Fax Number: 516-355-4602

Date: 04/04/2022

Borrower(s): PHILIP HINES

Current Address:



Property Address: 4813 & 4815 Avenue N
 Brooklyn, NY 11234

Loan Program: 30/40 10 I/O Year Fixed Conventional

Type of Mortgage: Fixed

We are pleased to advise you that your application for a mortgage loan on the above-captioned property has been approved subject to the following terms and conditions:

1. **LOAN AMOUNT:** \$1,275,000.00
TERM: 480 months

☐ Your loan has a balloon payment. -- N/A

2. **POINTS:** The number of points that you will have to pay us will depend upon the interest rate that is set prior to closing. You will be required to pay a minimum of points to a maximum of points at closing.

a. **ORIGINATION FEE:** The origination fee is \$ (% of the loan amount).

b. **DISCOUNT POINTS:** The discount points are \$ (% of the loan amount).

3. **COMMITMENT FEE:** The commitment fee is \$. This fee is not included in the Origination Fee or Discount Points stated above.

4. **INTEREST RATE:** TBD%
MONTHLY PAYMENT: \$TBD

FOR ADJUSTABLE INTEREST RATE MORTGAGES ONLY

Adjustment period: Every month after an initial fixed rate period of months

Caps: Per Adjustment: % (first adjustment only)
 Thereafter: %
 Lifetime: %

Negative amortization: ☐ Yes
☒ No

Margin:
Index:
Index Source: SOFR_30DayAvg

5. **EXPIRATION DATE:** The expiration date of this commitment is 05/03/2022.

If your loan does not close by this date, we have no obligation to honor the terms of this agreement.

If this loan is for the refinance of the mortgage on your primary residence, you will not receive the loan proceeds on the date of your closing. Therefore, your loan must close at least three (3) business days prior to the expiration date stated above or the lender has no obligation to honor the terms of this agreement, and this may result in a higher rate or more points being charged on your loan.

Borrower Initials _____

6. As compensation for its services, your Mortgage Broker will be paid as checked below:

We will pay your mortgage broker % of the loan amount or \$. The compensation your mortgage broker will receive from us for its services is included in the rate, points, fees, and terms of the loan as quoted by us in this commitment. The maximum points paid, including any premium pricing payable by us to your mortgage broker shall not exceed () points. The basis for the premium pricing payment, if any, is.

You will pay to your mortgage broker, upon your signed acceptance of this commitment or at closing % of the loan amount or \$.

7. **HAZARD INSURANCE:** Prior to closing, you shall furnish this office with an original hazard insurance policy or a Binder Agreement, satisfactory to the lender. Hazard insurance coverage must be for \$1,275,000.00 or contain a "Guaranteed Home Replacement Cost Endorsement," whichever is lower. We cannot require you to obtain a policy which exceeds the guaranteed replacement cost of the improvements securing the loan.

8. **FLOOD INSURANCE:**

☐ Flood insurance will be required as a condition of this loan.

9. **PRIVATE MORTGAGE INSURANCE ("PMI"):** PMI ☐ is ☒ is not required as a condition of making this loan. If PMI is required, you may terminate your mortgage loan guaranty insurance when the unpaid principal amount of the real estate loan represents 75% or less of the real estate's appraised value at the time the loan was made. However, if your mortgage is on a single-family dwelling that is your primary residence, then your loan may be eligible under federal law for earlier termination. A checkmark in the box below denotes whether your loan insurance may be terminated sooner. If so, you will be provided prior to closing with additional information explaining how the federal law may affect your mortgage insurance.

Your PMI is eligible under federal law for termination sooner than indicated above. We will provide you with a separate disclosure that states the conditions under which such insurance may be terminated.

10. **REAL ESTATE TAX AND HAZARD INSURANCE ESCROWS:**

At closing, an escrow impound account will be established and an initial escrow deposit will be required in accordance with RESPA.

11. **ASSUMPTION:** Someone buying your house May Not ASSUME YOUR LOAN

12. **NO ORAL MODIFICATION:** This agreement cannot be changed orally.

13. **REFUNDABILITY:** Your Commitment Fee and/or points are non-refundable, except for the following conditions:

- A. If this commitment is conditioned on the approval of a third-party investor or mortgage insurance company and that party rejects the loan.
- B. If this commitment is conditioned upon the property appraisal report and said report is not favorable for the loan for which the commitment was issued.
- C. If this commitment is conditioned upon an initial credit report and said report is not favorable for the loan for which the commitment was issued.
- D. If the interest rate exceeds the rate for which you qualify and therefore, this commitment becomes null and void.

14. **COMMITMENT CONDITIONS:**

IF YOU SIGN THIS COMMITMENT AND YOU DO NOT CLOSE THIS LOAN IN ACCORDANCE WITH THE DESCRIBED TERMS, YOU MAY LOSE SOME OR ALL OF THE FEES OR CHARGES YOU HAVE PAID.

This commitment is subject to the following additional conditions:

Hazard insurance with Dwelling Coverage equal to the loan amount or a lesser dollar amount with Guaranteed Replacement Cost Coverage on the Dwelling will be required as a condition of our granting this loan. We cannot require you to obtain or maintain a hazard insurance policy more than the replacement cost of the improvements on the property securing the loan.

Four days prior to scheduling a closing, please furnish us with an original hazard insurance policy with extended coverage issued by a company having a rating of "A" or better by Bests covering the subject property, naming:

Wall Street Mortgage Bankers, Ltd. d/b/a Power Express
its successors and/or assigns, as their interests may appear,
1010 Northern Blvd., Suite 336

Borrower Initials _____

Great Neck, NY 11021

as first mortgagee, together with a paid receipt for the first annual premium. When required, a prepaid flood insurance policy is needed. **Please include Agent's Name, Address and Phone Number on Certificate.**

In lieu of an original hazard insurance policy, we will accept a binder issued by an insurer or a duly authorized representative of an insurer, licensed to do business in this State, together with a receipt indicating that the annual premium on the insurance policy has been paid.

A SATISFACTORY TERMITE INSPECTION CERTIFICATE MUST BE PRESENTED AT CLOSING. (Not Required for Refinances or Condominiums)

This commitment is conditioned on the subject property being Investor.

This commitment may be withdrawn or revoked at any time for any of the following reasons:

- (a) Examination reveals an unmarketable or defective title.
- (b) There is a change in the facts stated in the mortgage application, the documents in support thereof or the credit report.
- (c) There is a change in the valuation or character of the subject premises.
- (d) Any material representations made in your loan application are incorrect.
- (e) If a Lis Pendens has been filed against the subject property.

Prior to scheduling a closing, you must furnish us with a title report and a policy of title insurance with the beneficiary named as in the hazard insurance policy, as aforesaid, a survey guaranteed to the lender or a title company completed by a surveyor licensed in the state in which the property is located, showing all completed improvements on the property, a certificate of occupancy for all existing structures and improvements (temporary C.O.'s are not acceptable) and other related searches or you may authorize us to obtain these materials for you at your expense. The attorney for the lender must approve the title for the property.

Updated Application: At closing, all borrowers are required to sign a new mortgage loan application reflecting updated credit, employment, and income information.

Additional Documentation: You agree to provide the bank with any additional financial documentation that the Bank may request.

Re-verification: At closing all borrowers are required to sign a "Re-verification Authorization" form permitting the Bank, its successors and/or assigns, to re-verify information contained in the loan application package.

Financial Transactions of Borrower: The Lender reserves the right to cancel this commitment if the Lender becomes aware of any information which would suggest that (i) the borrower has or may have, violated or will, or may, violate any federal or state law including, but not limited to, violation involving the reporting requirements for currency and monetary instruments transactions, the structuring of currency transactions and money laundering or (ii) the borrower's assets or the property which will secure this loan may become subject to forfeiture under any federal or state law.

Commitment to Survive Closing: This commitment shall not expire or terminate merely because the loan has closed, but its terms and conditions shall survive the closing and continue to be enforceable.

15. THIS COMMITMENT IS ALSO SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:

You must sign the note, mortgage and any other loan document prepared by the lender's attorney for this loan to comply with applicable regulations and render the loan saleable in the secondary market. This provision will survive the closing of the loan contemplated herein. If you wish to see copies of these documents before closing, contact the lender's attorney.

You must pay all closing costs, including the legal and title expenses in connection with this loan. These include recording fees and taxes, charges for additional endorsements to the Final Title Policy, lender attorney's fees, and search and title charges not paid by others. In no event will the Lender be responsible for any closing costs.

Interest Due at Closing: If your loan does not close on the first day of this month, you will pay to the Bank at closing interest from the date of the closing to the end of that month.

Any fees which are payable to the lender or its attorney and which are remitted at closing are to be in the form of a bank or certified check.

The lender may refuse to close the loan if you borrower any money other than this loan for the purpose of buying the property.

If you are purchasing the property, any change in the contract price which results in a purchase price lower than that shown on your mortgage application must be communicated to us prior to loan closing and may result in a decrease in the amount of the mortgage loan that we will make to you.

Borrower Initials _____

It is required that an affidavit from the seller be provided to the lender indicating that an operable single station smoke detecting device has been installed prior to sale or transfer of the property.

You must pay at closing a flood certification fee of \$6.00.

16. CLOSING INFORMATION:

To arrange for your closing, please contact:

Phone:

If this is a Consolidation, Extension and Modification Agreement transaction, a fee will be charged by the lender's attorney.

Please furnish us with the name, address, and telephone number of your attorney:

17. DOCUMENTATION: The following is a list of information and conditions that we may require you to produce and/or satisfy prior to closing your loan:

If your loan is related to a one to four owner occupied dwelling or condominium:

Title report and insurance, property survey, copy of Certificate of Occupancy for use, satisfactory final inspection (if new construction), evidence of appropriate hazard insurance, evidence of flood insurance as appropriate, master policy insurance certificate (if applicable in the case of condominiums), termite inspection report, radon test, well water test report and septic inspection report.

If your loan is related to a cooperative housing unit:

Proprietary lease, recognition agreement, pledge of shares of stock, warranty, and representation that no outstanding claims against the proprietary lease or stock will exist at closing and a copy of certificate of occupancy and title policy for the entire building if conversion has occurred within the last six (6) months.

18. THIS COMMITMENT IS SUBJECT TO THE FOLLOWING CONDITIONS PRIOR TO CLOSING AND ALL CONDITIONS TO BE ACCEPTABLE TO UNDERWRITER:

- File is subject to Quality Control Review prior to closing.
- Four days prior to scheduling a closing, please furnish us with an original hazard insurance policy with extend coverage. Please include Agent's Name, Address and Phone Number on Certificate.
- Seller/Owner must be in Title for one year, if not, the Commitment may be rescinded.
- On all condo transactions, a copy of the borrower's insurance for the interior must be provided to the closing department.
- Borrower(s) to sign an inquiry letter explaining all inquiries, confirming no new debt has been established.
- All tax returns must be signed by all borrowers

Borrower Initials _____

Conditions to be Satisfied by Applicant(s) prior to Final Approval:

1. Provide evidence property address 4813 Ave N and 4815 Ave N Brooklyn NY 11234 have been combined on one parcel.
2. Subject to upper management approval for 75% LTV with credit score of 703 vs guideline requirement of 740 minimum.
3. Provide copy of initial application with section 3 updated to show status of current primary as retained and section 4 updated to show subject property as mixed-use property, also to contain the borrower and interviewer's signatures.
4. Closing agent to provide proposed deed and Tax Information sheet. If current tax bill is for vacant/unimproved loan, estimate amount required for proposed taxes.
5. Provide a satisfactory credit explanation letter for inquiries dated within 90 of report detailing if any new credit was obtained and for derogatory information appearing on the credit report: BUREAU OF ACCOUNTS CON.
6. Provide evidence of satisfactory March 2022 housing payment history for HOME POINT FINANCIAL C via one of the following methods: (1) 12 months canceled checks; (2) 12 months bank statements reflecting payment; (3) Verification of Mortgage from current lien holder; or (4) credit supplement. If Mortgage is held privately, 12 months checks, or bank statements will be required.
7. Provide executed letter explaining borrowers intended use for the commercial space of the subject property.
8. Provide a clear copy of a photo ID.
9. Provide copy of lease if subject property is currently rented.
10. Provide Certificate of Occupancy and code compliance.
11. Provide updated Flood Certification with the correct address for the subject property of 4813- 4815 Avenue N, Brooklyn, NY 11234.
12. Provide Hazard declaration page with sufficient dwelling coverage along with a paid receipt
13. Provide a copy of Purchase Sales Contract including all addendums fully executed by seller as it is currently only signed by buyer.
14. Provide a complete title report including a 24-month chain of title, proposed insured and policy amount for subject property.

Prior to Docs ("PTD") Conditions:**Internal conditions to be completed by Lender prior to final clearance of loan:**

1. Lender to obtain a fully completed appraisal reports on FNMA form 1025/multi/mixed report to include SSR and XML.
2. Lender to obtain appraisal review from CDA (Clear Capital) or ARR (Pro-Tek) to support value.
3. Provide evidence appraisal was delivered to borrower at least 3 days prior to closing or provide a fully executed 3-day waiver.
4. If applicable a second full appraisal will be required if loan is determined to be HPML.
5. Lender to provide Fraud Report to include all loan participants, as a PASS.
6. Satisfactory social security number validation through the Social Security Administration.
7. Satisfactory flood cert required and subject to review and approval. If in a flood zone, flood insurance will be required.
8. Satisfactory title to be ordered and show borrower on title at least past 6 months for cash-out. Cert of occupancy to be provided.
9. Closing Disclosure completed by lender prior to final clearance with correct close date.
10. Underwriter to rerun AUS findings prior to final clearance. 6mths PITI reserves required.

Review of closing disclosure to be approved by Funding Manager AFTER underwriter clears loan file

Closer to complete within 72hrs of closing:

1. Closer/underwriter checklist with all reports ran, reviewed & signed off.
2. Verbal on employment.
3. Title checklist completed

Borrower Initials _____

